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In the Supreme Court of the United States

OCTOBER TERM, 1956

THE TEXAS COMPANY, *Petitioner*

v.

UNITED STATES OF AMERICA AS OWNER OF THE *USS Ruchamkin* AND TEN OTHER NAVAL VESSELS OF THE UNITED STATES; AND EVELYN ECKERT, ADMINISTRATRIX OF THE ESTATE OF EDWARD JAMES ECKERT, JR., DECEASED, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Virginia (Pet. App. 29-41) is reported at 141 F. Supp. 97. The opinion of the United States Court of Appeals for the Fourth Circuit (Pet. App. 42-53) is reported at 241 F. 2d 819.

JURISDICTION

The judgment of the Court of Appeals was entered on January 25, 1957. A timely petition for rehearing was denied by order entered March 11, 1957. The petition for a writ of certiorari was filed on June 7, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, in a proceeding in admiralty, a vessel can be held liable *in rem* for the personal negligence of a tactical officer riding as a passenger aboard it, who is neither a member of its crew nor responsible for its navigation, and whose negligence does not involve or affect the navigation of that vessel, but consists solely in a failure to warn the crew of another vessel of an impending collision.

2. Whether as a matter of law the tanker *Washington*, encountering the lights of a naval formation off its starboard bow, was obliged by the Rules of Navigation to avoid, if possible, crossing in front of or between the vessels of the formation.

3. Whether as a matter of law the *Washington*, having crossed the course of such a naval formation, was required by the Rules of Navigation, to notify vessels of the formation, on intersecting courses, of impending course changes, by means of the statutorily prescribed whistle signals.

4. Whether in the circumstances of this case the *Washington* maintained a proper lookout so as to avoid collision with vessels having the right-of-way over her.

STATUTES AND REGULATIONS INVOLVED

The applicable statutes and international rules involved in this proceeding are set forth at pages 54-59 of petitioner's appendix.

STATEMENT

This case involves cross libels between the United States as owner of the destroyer escort *Rachamkin* and two other naval vessels, and the Texas Company as owner of the tanker *Washington*, as well as actions for seven wrongful deaths against the Texas Company, arising out of a collision between the two named vessels off Cape Henry, Virginia, in November 1952. The circumstances leading to the accident may be summarized as follows:

"During the evening of November 13, and the early morning of November 14, 1952, a United States Naval Task Group, consisting of eleven vessels, was engaged in amphibious training maneuvers about 55 miles off the Virginia Capes (Pet. App. 43). At the time of the collision, the Task Group was proceeding westerly in formation at a course of 257° towards a prearranged destination off Virginia Beach. For some time prior to the collision, the Task Group had been maneuvering in screen formation; four of its vessels—all destroyer-type ships—were sailing in an arc approximately two miles in advance of the main body, which consisted of the flagship, the *USS Fremont*, and five other vessels surrounding it in a rough circle (Pet. App. 44). The Commodore or Task Group Commander was riding aboard the *Fremont*. A subordinate officer in command of the destroyer screen was riding aboard the *USS Hollis*, one of the screen destroyers (Pet. App. 31)."

The Task Group's maneuvers had been well publicized, and were or should have been anticipated by the crew of the *Washington* which was in route up the coast from a Gulf port bound for Philadelphia (Pet. App. 45).[1] The formation was brilliantly lighted and the night was clear with excellent visibility, light winds, and a smooth sea (Pet. App. 30).

The Texas Company tanker *Washington*, on a northerly course of 7½°, had approached between five and ten miles of the Task Group, which was moving roughly vertical to her course in a westerly direction, when her crew detected the lights of the Task Group on her starboard bow (Pet. App. 32). Despite the fact that she was the burdened vessel, and required to keep out of the way of crossing vessels to starboard (see *infra*, pp. 6, 17-18), the *Washington* did not alter her course to pass to the east of the Task Group, but continued on an intersecting course without reducing speed (Pet. App. 32).

The *Washington* had been observed for some time, both visually and by radar, by the flagship and other vessels of the Task Group. At 0150, the flagship *Fremont* fixed the *Washington* at a distance of 10 miles off its port bow on a collision course with the *Capricornus*, the northernmost vessel of the main group around the flagship (Pet. App. 32). The tanker's bearing and course was observed continuously thereafter, while the ships of the Task Group

[1] Forty copies of a Notice to Mariners covering the proposed operation had been mailed by the Coast Guard on November 10 to the Texas Company in New York and five copies to the Texas Company in Norfolk (Pet. App. 45). The maneuvers had received extensive newspaper publicity (Pet. App. 35).

maintained their course and speed as they were required to do by the rules of navigation (*infra*, pp. 6, 17-18).[1] Attempts (unsuccessful as it proved) were made by the flagship to communicate with the *Washington* by radio and light blinker (Pet. App. 39). At 0205, when danger of collision had become imminent, the Task Group Commander ordered the speed of the squadron reduced from 14 to 8 knots (Pet. App. 32). Two minutes later, a further reduction to five knots was ordered (Pet. App. 32). The tanker, despite her position as the burdened vessel, continued to steam at a speed of 11½ knots on a course intersecting the lights of ten large vessels. (Pet. App. 32, 33).

The *Washington's* lookout testified that he saw and reported the lights of a vessel later identified as the *Buchanan* at 0200 (Pet. App. 48). At some time after 0200, the tanker passed between the *Hollis* and the *Lloyd*, the two middle ships of the screen, altering course for a short time to the east (21½°) when she sighted the port side lights of the more northerly screen vessels fine on her starboard bow (Pet. App. 33).

After this near-collision, the tanker returned to her northerly course without reducing speed or sounding her whistle, subsequently crossing in front of the *Lloyd* and thereafter the *Capricornus*, the foremost and northernmost vessels respectively of the main

[1] As shown more fully *infra*, a vessel having the right of way in a crossing situation must maintain her course and speed, until such time as she is too close to maneuver to avoid imminent collision under the "special circumstances" rule (Pet. App. 57, *See infra*, pp. 17-18).

Task Group.[3] During the *Washington's* persistent attempt to pass through the body of the naval formation, the Task Group Commander, in accordance with the law and considerations of the formation's own safety, maintained a unified course and formation; the formation was powerless to do anything other than attempt to warn the *Washington*.[4]

During this period, from about 0150 to 0210, or approximately 20 minutes, the *U.S.S. Ruchamkin* was steaming northward to rejoin the formation after having been detached to embark soldiers which were to take part in subsequent training exercises (Pet. App. 33). The *Ruchamkin's* assigned position was as the northernmost vessel in the destroyer screen and she approached west of the formation intending to circle it to the north and resume her position in the screen (Pet. App. 33). When the *Ruchamkin* reported her readiness to join the formation to the Screen Com-

[3] The *Washington* had been on a collision course with the *Capricornus* prior to that vessel's reduction in speed (*supra*, p. 4). Article 22 of the International Rules for Navigation at Sea states (Pet. App. 57; 33 U.S.C. 107): "Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other."

[4] That is, the formation, having the right of way over the *Washington*, had a duty, as pointed out *supra*, to maintain its course and speed until collision was imminent. *Pacific-Atlantic Steamship Co.* v. *United States*, 175 F. 2d 632 (C.A. 4), certiorari denied, 338 U.S. 863. Since January 1, 1954, a privileged vessel in a crossing situation has been authorized by the International Rules to sound a danger signal of five or more short blasts when in doubt as to a burdened vessel's intentions (33 U.S.C. 147b). At the time of this collision, however, that expedient was not available to the Task Group.

mander on the *Hollis* at 0138,[5] she was first told to maintain her position, at that time roughly east northeast of the formation on a course parallel to it (Pet. App. 33). At 0149, the *Ruchamkin* was ordered by the Screen Commander to "expedite" to a position where she could rejoin the screen (Pet. App. 34).

After the formation had been ordered to reduce speed, the Screen Commander, at 0202, gave the *Ruchamkin* a second order to "continue to expedite" (Pet. App. 34). The *Washington* had been observed by the *Hollis* to turn easterly to 211½ a short time earlier (*supra*, p. 5) and the tanker's presence and position had been repeatedly reported by radio to all the ships of the squadron, including the *Ruchamkin* which was known to be in the vicinity. The Screen Commander therefore had no reason to believe that the *Ruchamkin* was unaware of the *Washington's* presence and location when he ordered the destroyer to come up in preparation for resuming her position in the screen (Pet. App. 34). In fact, however, the *Ruchamkin* had not heard the periodic radio messages reporting the *Washington's* course and position; and when her lookouts sighted the *Washington's* lights shortly before the collision, they were assumed to be one of the ships in the formation (Pet. App. 34).

As we have already noted, the *Washington's* lookout testified that he had seen the *Ruchamkin's* lights coming up from the northeast at 0200, ten minutes before

[5] The *Ruchamkin* also reported her position to the Task Group Commander at 0140, and received an acknowledgement, without orders, since she operated as part of the screen which was subject to the immediate command of the Screen Commander (Pet. App. 33).

the collision, and had reported them to the tanker's bridge (Pet. App. 48). Shortly thereafter, the tanker passed between two of the destroyers in the screen, and then crossed in front of the *Glynn* and the *Capricornus*, the northernmost ship of the main body which had reduced speed to let her by. After passing the *Capricornus*, several minutes elapsed while the tanker held her course oblivious of the *Buchanan*, which was approaching at high speed unaware of her identity (Pet. App. 49). The *Washington's* mate did not look at a radar set, which was in good working order and in operation on her bridge, after 0200 (Pet. App. 47). Both vessels attempted evasive action before collision at 0245, damaging each vessel and killing seven soldiers on board the *Buchanan* and injuring others (Pet. App. 33).

Cross libels *in rem* and *in personam* were filed by the owners of both vessels and suits seeking damages for wrongful death were brought against the Texas Company by representatives of the seven deceased soldiers.[6] At the hearing, the various actions were consolidated; the District Court entered an interlocutory decree against the United States in favor of the Texas Company, and dismissed the United States' cross libel and the wrongful death actions against the *Washington* and the Texas Company (Pet. App. 43).[7] In a memo-

[6] The wrongful death claimants did not sue the United States, since their decedents had been members of United States Armed Forces, and their sole right of suit was against the *Washington*.

[7] Prior to this action, proceedings on a petition for limitation of liability filed by the Texas Company in the Southern District of New York were stayed, on stipulation by all claimants in that proceeding that their claims (which then did not exceed the Texas Company's interest in its vessel for limitation purposes) would not be increased. *In re Texas Company*, 213 F. 2d

randum opinion, which it adopted as its findings and conclusions of law, the court found the *Ruchamkin* guilty of negligent navigation and exonerated the *Washington* of all fault. It also found the Screen Commander personally negligent in ordering the *Ruchamkin* forward at high speed to rejoin the formation, and the Task Group Commander negligent in not countermanding the order (Pet. App. 35-39). The *Ruchamkin* was held liable *in rem* and the United States *in personam* for the faults of the *Ruchamkin's* officers (Pet. App. 39). The United States was held liable *in personam* for the negligence of the Task Group Commander and the Screen Commander and the *Fremont* and *Hollis*, the flagships on which those officers were riding, were held liable *in rem* (Pet. App. 39, 40).

Both the wrongful death claimants and the United States appealed. In its appeal, the United States did not contest the negligence of the *Ruchamkin* but argued that as a matter of law the *Washington* could not be held free from fault. The United States also challenged the District Court's holding that the *Hollis* and *Fremont* could be subject to *in rem* liability for the personal negligence of tactical commanders riding on board who were not members of the crews of those vessels.

The Court of Appeals held that the *Washington* could not be exonerated from liability to the United States and the wrongful death claimants as a matter of law, since the tanker was under an obligation to ob-

479 (C.A. 2), certiorari denied, 318 U.S. 789. Subsequently, a libel by the Texas Company against the United States and other death and personal injury actions, were transferred from the Southern District of New York to the Eastern District of Virginia for consolidation and trial in the proceedings below.

serve the right hand rule in approaching both the flotilla and the individual ships comprising it, and that the tanker's failure to keep out of the way of the formation or its individual vessels was a proximate cause of the collision (Pet. App. 44-45).[5] The court also held that the *Washington's* crew had failed to maintain a proper lookout and that the collision would not have occurred except for this negligence (Pet. App. 47-49). The court rejected, as clearly erroneous and unsupported by evidence, the District Court's finding that the tanker's view of the *Ruchamkin* was blocked by the *Capricornus* or other vessels until collision became inevitable (Pet. App. 48). It was also decided, one judge dissenting, that the *Fremont* and the *Hollis* could be held to *in rem* liability only for the negligence of their crew members, not for the personal negligence of officers riding aboard them (Pet. App. 50-53).

ARGUMENT

The Fourth Circuit has held that *in rem* liability cannot be imposed on a vessel for personal negligence of a tactical officer riding aboard that vessel who was not a crew member and whose negligence had no bearing on the vessel's operation. In so holding, the court followed decisions of the Second Circuit and the English Court of Appeal, the only courts heretofore passing on the question, which have reached the only result consonant with the fundamentals of *in rem* jurisdiction. The court has also held here, on well settled

[5] The court below also held that the tanker's failure to sound its whistle, as required by Article 28 (Pet. App. 58), when it changed course shortly before the collision, was negligent as a matter of law (Pet. App. 50).

principles, that a "burdened" vessel cannot sail blindly into the midst of a brilliantly lighted convoy without at least incurring some degree of fault in the resulting collision. Both rulings involve narrow questions of maritime law on which there is no conflict of decisions, and the results reached are amply supported by precedent and reason. There is no occasion for review by this Court.

1. Since this Court's decision in *Canadian Aviator, Ltd.* v. *United States*, 324 U.S. 215, there can be no question that the United States is subject to suit as a private shipowner both *in personam* and *in rem* for injuries arising from the operation of its public vessels in all respects, except that no public vessel is subject to arrest or seizure and that proceedings must take the form of a libel *in personam*. 46 U.S.C. 781, 741, 742; Pet. App. 54-55. Construing the language of the Public Vessels Act in that case, the Court stated (324 U.S. at 224):

> The use of the phrase "caused by a public vessel" constitutes an adoption by Congress of the customary legal terminology of the admiralty law which refers to the vessel as causing the harm although the actual cause is the negligence of the personnel in the operation of the ship. Such personification of the vessel, treating it as a juristic person whose acts and omissions, although brought about by her personnel, are personal acts of the ship for which, as a juristic person, she is legally responsible, has long been recognized by this Court.

The United States does not dispute that it is subject to suit for the negligence of any of its officers contributing to the present collision, or to *in rem* liability

for any "negligence of [Government] personnel in the operation of [any] ship" here involved, if the negligence constituted "personal acts of the ship for which, as a juristic person, she is legally responsible." Thus, the Government has been held liable *in personam* for the negligence of the Task Group Commander and the Screen Commander, and liable both *in rem* and *in personam* for the acts of the *Rachamkin* and her crew.[7] But the United States has contended, and the court below has held, that the *Hollis* and *Fremont*, the flag vessels on which the Screen and Task Group Commanders were riding, were not subject to *in rem* liability for the negligence of those officers. No other result would be compatible with the basic character of *in rem* jurisdiction.

Under well-established principles, a vessel can be held liable *in rem* only for negligence of her crew acting on behalf of the vessel as a juristic person. *United States* v. *Brig Malek Adhel*, 2 How. 210, 234. The negligence must occur in the course of the vessel's operations while its crew are acting on its behalf; and the vessel's operation must be a causative factor in—although not necessarily the physical cause of—the damage. Thus, the negligence of a member of the vessel's crew not on board the vessel or acting on its behalf (*The Connie*, 267 Fed. 686 (C.A. 2)), or the negligence of one on board who is not acting on its be-

[7] Doubt expressed by the District Court (Pet. App. 40) whether the United States would be liable for the negligence of those officers, if not imputable to their flag vessels is untenable, since if the United States is not liable under the *Canadian Aviator* holding the Public Vessels Act subjects the Government to the same *in rem* and *in personam* liability as a private shipowner, 327 U.S. at 227, 228; then the Government necessarily would be liable under the Federal Tort Claims Act, 28 U.S.C. 1346 . . .

half or responsible for the vessel's navigation (*Publicover* v. *Alcoa S. S. Co.*, 168 F. 2d 672 (C.A. 2)), cannot be imputed to the vessel for the purposes of *in rem* liability. Similarly, while a vessel's owner is not liable *in personam* for the negligence of a compulsory pilot who is not the owner's servant, the vessel itself is liable *in rem*, since the pilot has assumed direct control over its navigation, and acts as its representative, and thus has become for all practical purposes a part of its crew. *The China*, 7 Wall. 53.[10]

This principle has been specifically applied to bar *in rem* liability for the negligence of an officer merely riding on board a vessel but not directly responsible for its navigation, whether the officer is or is not an employee of the ship's owner. In *Publicover* v. *Alcoa S. S. Co.*, 168 F. 2d 672 (C.A. 2), it was sought to hold *in rem* a merchant vessel sailing in a wartime convoy for the alleged negligence of its master, in his capacity as commodore of the convoy, in failing to direct the navigation of another vessel in the convoy which collided with a third ship. The Second Circuit (per Hand, L. J.) held (1) that the merchant vessel's owner could not be held *in personam* for the commodore's negligence, since he was not its servant in that capacity, having been designated by public authority; and (2) that the vessel could not be held *in rem* since the fault of the commodore, acting as commodore, could not be imputed to the vessel on *in rem* principles. 168 F. 2d at 678.

A corollary of this principle is that a vessel is not liable in rem for physical damage to another vessel where the negligence which caused the damage is that of the crew of the latter vessel. *Liverpool Borneo Steamship Co.* v. *Turkish Steamship Co.*, [illegible]

> Finally, even though we were to press the liability of the "Cyrus Field" as a fictitious jural person, she was not at fault; she did not contribute to the collision. The hypothesis is that it was the failure of the commodore to take charge of the "Alcoa Pilot's" navigation which was the fault.

Likewise, in *The Sobieski* [1949] L.R. Prob. 313, 320 (accord, *Glaucus and City of Florence* [1948] L.R. Prob. 95) the Court of Appeal held that the negligence of a British naval officer, serving as commander (senior escort officer) of a wartime convoy while riding on a destroyer escort, who failed to warn another vessel in the convoy of impending collision, could not be imputed to the escort which had its own captain; it was recognized, however, that the commander, and hence the British Government, could be held to *in personam* liability.

Here, as in *The Sobieski*, the two tactical commanders aboard the *Hollis* and the *Fremont* were not responsible for and did not control the navigation of those vessels. While the flag vessels' movements were directed by the tactical commanders to the same extent as other vessels in the squadron, the actual responsibility for navigating those vessels remained with their captains, and could not be delegated (Pet. App. 51, 52).

Cases relied on by petitioner to establish a contrary rule (Pet. 12-19) all deal with the situation where one vessel (*i.e.*, a ship and its captain and crew, not a third person lacking direct responsibility for its navigation) controls the movement of another vessel, either physically or by direct orders. Those cases all present the "tug-tow analogy" drawn by this Court in

Canadian Aviator, Ltd. v. *United States*, 324 U.S. 215, 228. Thus, *United States* v. *The Australia Star*, 172 F. 2d 472 (C.A. 2), held a Navy patrol boat liable *in rem* for failure to warn a vessel which it was escorting of an impending collision, in circumstances where "for all practical purposes" the escorted vessel "was as firmly fastened to the stern of [the patrol boat]" as if she had been in tow." *Canadian Aviator*, 324 U.S at 229.

The fact that the *Ruckamkin* was under orders to follow the sailing directions of the Screen Commander, therefore, does not impose *in rem* liability upon the *Hollis*, the vessel on which that officer was riding, for neither the *Hollis* nor its crew was responsible in any way for the orders of the tactical officers or the safe navigation of the *Ruckamkin* nor any other vessel of the formation. *In rem* admiralty liability, which imposes a fictional responsibility on a vessel for the acts of its crew, cannot be extended to the acts of an officer whose presence as a passenger on the vessel is merely coincidental to its operation as part of the formation.[11] As Mr. Justice Holmes said, for the Court in *The Eugene F. Moran*, 212 U.S. 466, 474, refusing to extend the fiction of *in rem* liability to hold liable a vessel physically causing damage, but otherwise guiltless:

> Possibly the survival of the fiction has been helped by the convenient security that it furnishes just as no doubt the responsibility of a master for a

[11] As the court below pointed out, the tactical commander could equally well have been stationed on land or on an airship ("Per Ange 451"). Indeed, in combined airsea, anti-submarine operations, the officer controlling the movements of the naval formation may be stationed in a "blimp," an airship, which could hardly be held to *in rem* liability.

> servant's torts, that he has done his best to prevent, has been helped by the feeling that it was desirable to have some one who was able to pay. See *Williamson* v. *Price*, 4 Martin, N.S. 399, 401; *Williams* v. *Jones*, 3 H. & C. 256, 263. But after all a fiction is not a satisfactory ground for taking one man's property to satisfy another man's wrong, and it should not be extended. There is a practical life and a difference in degree between the case where the harm is done by the mismanagement of the offending vessel and that where it is done by the mismanagement of another vessel to which the immediate but innocent instrument of harm is attached.

The distinction drawn by the court below between the present case and a "tug-tow" relationship is more than a technicality; it goes to the roots of *in rem* liability. Where the escort vessel is completely responsible for the navigation of the escorted vessel (the "tug-tow analogy"), the subordinate vessel is frequently held blameless for damage caused by the negligence of the escort. In such a case, the escort is the only vessel which can be held responsible *in rem* for the injury. In contrast, a vessel sailing in convoy subject to the orders of a commodore will be subject to *in rem* liability for any negligent maneuver on its part, even if taken in response to orders of a commodore, as in this case. Such a ship which is itself responsible for its own movements, cannot be said to be controlled in an *in rem* sense by an officer stationed on another vessel, since its own captain is finally responsible for its operations.

2. Petitioner also contends (Pet. 21-27) that the court below improperly substituted its own findings of fact for those of the District Court in holding the

Washington at-fault in the collision. The Fourth Circuit's opinion (Pet. App. 42-53), however, demonstrates that it concluded that the *Washington* was at fault as a matter of law for failing to comply with mandatory rules of navigation.

While the District Court absolved the *Washington*, the facts actually found by that court presented a classic "both-to-blame" situation in which two vessels, by violating the rules of navigation or ordinary principles of seamanship, had placed themselves in a situation where neither could avoid collision. The fault of the *Ratchaphin* was her excessive speed in closing with the formation when she knew or ought to have known of the dangers presented by the *Washington*.[12] The primary fault of the *Washington*, as the court below recognized, was her repeated violations of the starboard hand rule in not avoiding the formation or the various vessels constituting it.

The District Court recognized (Pet. App. 35) that the tanker was the burdened vessel under Articles 19, 21-23, of the Rules of Navigation (Pet. App. 57). Notwithstanding, it held as a matter of law that the tanker was relieved of the obligation to comply with the Rules because she did not identify the lights to her starboard as a naval formation, and thereafter had no choice but to intersect the formation, stating "There was no other way for her. Had she stopped or slowed she would have been overwhelmed by the flotilla" (Pet. App. 37). The Court of Appeals disagreed with both conclusions. It held that, even accepting the District Court's findings and assumptions,

[12] It should be noted that the District Court "rejected" the testimony of the Screen Commander and Air Task Group Commander in the *Ratchaphin* (Pet. App. 30).

the tanker on sighting the lights of a group of vessels on her starboard bow was required as a matter of law to alter course (in this case to eastward) if necessary to avoid crossing in front or through the formation (Pet. App. 45). The court also held that, assuming that the tanker was entitled to enter the formation, she was still obligated to avoid crossing in front of the *Lloyd*, the *Glynn*, the *Capricornus* and the *Rachamkin*, which she did in succession; had she turned eastward, or even reduced her speed, to pass to the stern of any one of those vessels, the collision would probably have been avoided (Pet. App. 45-47).

Both holdings of the court below are applications of the accepted principle that the starboard hand rule, which is both a statutory command and a principle of sound seamanship, must be obeyed regardless of other circumstances, wherever a burdened vessel has reason to believe she may be on a crossing course with vessels to starboard of her. *Pacific-Atlantic Steamship Co. v. United States*, 175 F. 2d 632 (C.A. 4), certiorari denied, 338 U.S. 868; *Ocean Steamship Co. v. United States*, 38 F. 2d 782 (C.A. 2); *The Pennsylvania*, 19 Wall. 125; *Belden v. Chase*, 150 U.S. 674, 699; *The Albert Dumois*, 177 U.S. 240, 249; *The Oregon*, 158 U.S. 186; *The F. J. Wolfe* [1946] L. R. Prob. 91, 79 Lloyd's List 341 (Ct. App.).

Additionally, the Court of Appeals held that the *Washington* was at fault in failing to give the required whistle signal (Pet. App. 58) before turning from 21½° to 71½° after crossing in front of the *Lloyd*, particularly in view of the fact that a signal might well have alerted the Screen Commander that the tanker had turned northward and thus was again on a intersecting course with the *Rachamkin* and the other ves-

sels (Pet. App. 50). In the absence of the statutory signal, the Screen Commander was entitled to assume that the *Washington* would continue eastward out of the formation. *Oriental Trading & Transport Co.* v. *Gulf Oil Corp.*, 173 F. 2d 108 (C.A. 2), certiorari denied, 337 U.S. 919. The District Court had absolved the *Washington* on the ground that the *Rachamkin* was not then in sight, but, as the court below points out (Pet. App. 50), this did not relieve the tanker of her obligation to the *Glynn* and *Capricornus* which were in sight and on intersecting courses with the tanker. The signal requirement is an absolute one; had a signal been given, the collision might well have been avoided. *States Steamship Co.* v. *Permanente Steamship Corp.*, 231 F. 2d 82 (C.A. 9).[13]

Finally, the Court of Appeals held that the *Washington's* contention that neither her lookout nor mate saw or could have seen the lights of the *Capricornus*, the *Rachamkin*, or other crossing vessels, could not be credited in view of the facts found by the District Court. It concluded that the tanker either had not kept a proper lookout (which might have avoided the collision), or had failed to act on what she did see (Pet. App. 47-49). In so holding, the court rejected as clearly erroneous the District Court's findings that the *Capricornus* had hidden the *Rachamkin* from the *Washington* until it was too late to avoid collision (Pet. App. 48).

The Court of Appeals' opinion indicates that in reaching the above conclusions it did not merely sub-

[13] The court also held that the *Washington* was at fault as a matter of law in failing to consult her radar for fifteen minutes prior to the collision, since she knew she was then maneuvering in the midst of a large number of ships. Pet. App. 47.

stitute its own view of the facts for that of the District Court. Rather, it held that the conclusions drawn by the District Court from findings as to what the *Washington* saw, or should have seen, could not be reconciled with its findings as a whole.[13] Hence, the review by the court below complied in all respects with Rule 52(a) of the Federal Rules of Civil Procedure.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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[13] On this aspect of the case the Court of Appeals was unanimous.